

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Civil) No. 12769/2009**

% Reserved on: October 30, 2009

Decided on: November 16, 2009

S C SAHA Petitioner

Through: Mr. T.N. Tripathi, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. R.V. Sinha, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Not necessary
3. Whether the judgment should be reported
in the Digest? Not necessary

MUKTA GUPTA, J.

1. By way of the present writ petition the Petitioner has impugned the order dated 7th August, 2009 of the Central Administrative Tribunal, Principal Bench, New Delhi, whereby his Original Application No. 2073/2009 was dismissed. In the Original Application filed under Section 19 of the

Administrative Tribunals Act, 1985 the Petitioner had questioned the order dated 26th May, 2009 vide which his representation complaining about his non-promotion to the rank of ACIO-I/Exe was rejected and also the Memorandum dated 19th February, 2008 vide which he was conveyed adverse remarks in his ACR for the year 2006-07.

2. The facts of the case are that the Petitioner by way of Memorandum dated 19th February, 2008 was communicated adverse remarks, which are as follows:

“Short tempered and did not come forward to accept any additional responsibility.”

3. Despite the fact that the Petitioner was communicated this Memorandum dated 19th February, 2008, he did not make any representation against the said memorandum and thus, in the meantime on 31st March, 2009 a promotion list was issued wherein the Petitioner was not reflected in the next promotional grade. In the Memorandum dated 19th February, 2008 it was clearly mentioned that as per government instructions on the subject, only one representation against adverse remarks is allowed within one month from the date of communication of such remarks and no memorial or appeal against rejection of the representation is allowed six months after such rejection. It is

also mentioned that vide DOP&T instructions dated 5th August, 1991, no appeal against rejection of representation by the competent authority lies to an authority within the department. The Petitioner retired on 31st May, 2009. After retirement the Petitioner made a representation on 2nd June, 2009 against remarks as mentioned above. The only explanation with regard to the delayed reaction on the part of the Petitioner is that while he was sorting out his papers relating to his service record at the time of his retirement he found the said memorandum and thus, challenged it thereafter.

4. We have heard learned counsel for the parties and perused the records. Undoubtedly, the Petitioner has challenged his adverse remarks belatedly and thus, no fault can be found with the Respondents of having not promoted him in view of the adverse remarks. The Petitioner has contended that the ACR for the financial year 2006-2007 was communicated to him belatedly with mala fide intention as the same has not been issued to the applicant within the prescribed period. The adverse remarks for the year 2006-2007 were communicated to the Petitioner vide memorandum dated 19.2.2008, to which the Petitioner made a representation only on 2.6.2009. In our view the action of Respondents cannot be stated to be mala fide as they conveyed the adverse remarks belatedly. The Petitioner has further alleged that the adverse remarks are a result of bias. The allegations of bias are easy to make but difficult to

prove. Bias and mala fide have to be specifically alleged and the person against whom the same is alleged has to be made a party in person so that he can file an appropriate reply. In the absence of specific allegations the contention of the Petitioner with regard to bias falls to the ground.

5. We are in agreement with the order passed by the Central Administrative Tribunal and find no infirmity in it.

6. The present writ petition is dismissed being devoid of merit. No order as to costs.

MUKTA GUPTA, J

MADAN B. LOKUR, J

NOVEMBER 16, 2009

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